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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,590

09/15/2003

Charles J. Farrell

9322

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7590

04/23/2007

EXAMINER

HALE, GLORIA M

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

04/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Notice of Non-Compliant Amendment (37 CFR 1.121)**

Application No.

10/662,590

Examiner

Gloria Hale

Applicant(s)

FARRELL, CHARLES J.

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 17 August 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
  - ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☒ C. Other See attachment.
- ☒ 2. Abstract:
  - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☒ B. Other See attachment.
- ☒ 3. Amendments to the drawings:
  - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
  - ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☒ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See attachment.
- ☒ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

The Amendment did not include the proper Cover letter with the instructions in regard to the amendments to the Claims, Drawings, Abstract and Substitute Specification

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

## TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

GLORIA M. HALE

PRIMARY EXAMINER

Legal Instruments Examiner (LIE), if applicable

TECHNOLOGY CENTER 3700

Applicant's response of 8-17-06 was not entered since it was Non-Compliant and also Non-Responsive and contained numerous deficiencies.

Every response to an office action must be properly identified so that it can be promptly and correctly matched up with its file at the USPTO. It is also strongly suggested that each page of a response be numbered in order and include the Application Serial Number at the top so that it can be promptly and properly placed in the applicant's file. Each response filed should also include a cover letter that clearly states the Application's Serial Number, the inventors name, the Examiner's name and Art Unit number, the number of pages being submitted, the Office Action date that the response is in response to and the contents of the response such as new Abstract, Claim Amendment, Substitute Specification and Replacement Drawings. If a response is late an Extension of Time Request with the appropriate fee should be included in addition to a Certificate of Mailed. Every Amendment must also be signed and dated.

Every re-written Substitute Specification must include a letter stating that it is a Substitute Specification and that it does not contain any new matter. Additionally, a marked up copy showing the changes made to the original specification must be included to show that no new matter has been added. Deletions should be lined through and additions should be underlined. Specific amendment instructions were sent to applicant's representative, Jack Lo, with the Notice of Non-Complaint Amendment (37CFR 1.121) on 3-8-06. Another copy of the instructions are attached.

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Additionally, applicant is instructed to visit the USPTO website at [www.USPTO.gov](http://www.USPTO.gov) under patents for additional information on how to file a correct response.

Specific Deficiencies in Applicant's Response Received on 8-17-06 include:

In regard to the Drawings of 8-17-06:

The Drawings must include at the top of each page the marking that the page is a "Replacement Sheet". This was not present in the Drawings received on 8-17-06

In regard to the Abstract received on 8-17-06:

Applicant did not include an instruction to replace the original Abstract with the one received on 8-17-06. The instruction to do so was not present on an Amendment cover sheet since one was not submitted with the amendment. The instruction did not include a statement that the new Abstract does not contain new matter. Also, in a "Remarks" section of the response, which was also not submitted, applicant has not stated that new matter has not been added to the Abstract. Nor has applicant given a page and line reference in the original specification or Abstract as to where the newly added information was previously stated. The new Abstract is also not in compliance since it contains over 150 words. There are grammatical, English and spelling errors such as in line 7 and in the penultimate line the word "throw" should read - - through - - and in the last line "stitch" should read - stitched - - . The statements in regard to the

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measurements on lines 9-10 is new matter. In the "Response Remarks" applicant must state where in the original specification of 9-15-03 this information was included. If it is not in the original specification it is considered new matter and must be deleted. Since this Abstract has not been entered any changes made in the future should be made from the original Abstract of 9-15-03.

In the Specification of 8-17-06:

Applicant did not number each page consecutively. The specification did not include the Serial Number at the top of each page. The pages were not double-spaced as required. The line numbers were too close to the specification language and was confusing. The first letter of each line in some lines were inadvertently capitalized such as in lines 18-20 on the second page of the 8-17-06 specification. Line 30 includes "ii" markings therein.

On page 2, lines 20-21,28-30,32 and 42-43 of the specification,, appear to include new matter. These include that the open centers are filled with fabric, the slide buckles as being stitched to the top of the cup and the specific size of the tings. None of this information was in the original specification nor has a "Response Remarks" section with reference citations of page and line been given where the original support in the original specification existed. Additionally, a marked up specification showing the changes to the original specification ahs not been provided. The reference list provided in the application shows that reference numbers 27,28,49 and 50 are "Nipple Area" and

not fabric within the ring. The original specification did not states that there was fabric within the ring nor did the drawings shown a fabric weave or wrinkling of fabric to indicate that fabric was within the ring.

There are many grammatical, typographical and spelling errors throughout the 8-17-06 specification including in lines 30,43 and 49-50. These are only examples and other deficiencies are present. Applicant must review the 8-17-06 specification and remove any new matter, correct grammatical, typographical and spelling errors. The Specification must be double spaced, use line numbers in the margin area wherein every 5<sup>th</sup> line only needs to be numbered. Each page must be numbered with a Serial Number on each page so no pages are lost and can be promptly placed in its file. The prior art pages list each reference cited by the Examiner with an explanation of what the applicant thinks the prior art reference shows. These pages also include typographical, grammatical and spelling errors and it is not clear as to whether the applicant intends to include the information in the substitute specification since the pages were not numbered and no instruction was given as to where they are to be inserted or if they are to be included. Each page should not include the title "Background of the Invention" since only one such title is necessary in the application. If the pages are properly numbered such a marking is not necessary on every page.

Applicant did not include a proper response Remarks section. Applicant did not respond to the prior art rejections to Schwinkler (US 1,019,577) on page 3 of the Office Action or to the Anselmo (US 2,452,345) rejection. Also the rejections under 35 USC

112, First and Second paragraphs were not addressed in the "Response Remarks" section.

Applicant must state why their claimed invention is not disclosed by the prior art cited in each rejection. If a claim is now amended to overcome the prior art rejection then applicant must explain how the new language added overcomes the prior art rejection. Also applicant must also state that an amendment is not new matter and why it should not be considered as being new matter.

However, applicant's amendment to the claims does not follow the required rules under 1.121 as outlined on the attached sheet which was originally sent to applicant's representative Jack Lo on 3-8-06. For example, the claims are not in consecutive order as numbered. There are now multiple claims numbered 2 and 3. The claims have been double numbered. The claim identifiers should be in parentheses. For example, the term "Claim 2" after each number is not necessary before each claim:

A claim should read as follows:

1.(Previously presented) A reinforced bra, comprising: ...

Applicant then has withdrawn claim 2 but then included a new claim 2 that appears to be original claim 4. This is incorrect. If a claim is removed it should be (cancelled) not (withdrawn). The old claim language should not be written or included if the claim has been canceled. Only the claim number identifier should be included such as "1.(Cancelled)". The language after the "withdrawn claim 2" is not from original claim 2. It is not clear as to where this language is from. The first listed claim 3 is not the original claim 3. The non-entered new set of claims is incorrect. The claims are not

properly numbered and the original language has not been properly typed as in the second listed claim 2 which is original claim 4. Claim 10 includes multiple sentences in addition to claims 11,13,14 and 16. The original claims only numbered 1-11 so it is not clear as to what the new claims 12-17 are or why they have been indicated as being currently amended.

It is advised that applicant review the rules under 1.121 on the attached sheet and re-submit a proper amendment to the Abstract, Claims and Specification with in the One Month time period given or file an extension of time with the appropriate fee. Extension of time forms can be obtained at [www.USPTO.gov](http://www.USPTO.gov) in addition to the fee information.

**Applicant's last Amendment to the claims, specification and abstract has not been entered since it was not in the proper format. Therefore, when applicant now amends the specification for the next submission he must amend the specification, claims and abstract based on the originally filed specification, abstract and claims. Therefore, any instructions to cancel claims, amend claims, amend the specification and abstract must be written in regard to the originally filed application. The deleted claim language should be written with a line there through and new language should be underlined. It is noted that when an amendment is not properly filed it is not entered and the application is not docketed to the Examiner for further action. As was the case with the last filed response wherein the application file was not even forwarded to the Examiner and they could not act on it. All submitted papers must follow the rules so that every applicant is treated equally and fairly within**

the rules outlined in the Manual of Patent Examining Procedure (MPEP) found at [www.USPTO.gov](http://www.USPTO.gov). Upon the submission of a proper amendment the application will be entered and acted upon promptly and within the required time period.

The above suggestions given are far beyond what is required by the Examiner when a Non-Compliant and Non-Responsive amendment has been submitted.



Gloria Hale

Primary Examiner- AU 3765